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May 7, 2018

VIA HAND-DELIVERY

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**Re: CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch
Communications, Inc., Docket No. 18-73, File No. EB-18-MD-002 – Reply in Support of
Formal Complaint**

Dear Secretary Dortch and Commission Staff:

Enclosed please find the Reply in Support of Formal Complaint and exhibits thereto submitted by CenturyLink Communications, LLC and Level 3 Communications, LLC in connection with the above-referenced proceeding. Pursuant to Section 11-2(b) of the Protective Order, please note that the following materials contain Confidential Information subject to the Protective Order: Pages 3, 4, and 10 of the Reply in Support of Formal Complaint, and Exhibit 1 (and Attachments 1 through 5 thereto).

We appreciate your consideration. Please call me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck M. Steese". The signature is fluid and cursive, with the first name "Chuck" and last name "Steese" clearly legible.

Chuck Steese

CC: Timothy Boucher, Esq.
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PUBLIC VERSION

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	Docket No. 18-73
CenturyLink Communications, LLC)	File No. EB-18-MD-002
and Level 3 Communications, LLC,)	
)	
Complainants,)	
)	
v.)	
)	
Birch Communications, Inc.,)	
)	
Defendant.)	

REPLY IN SUPPORT OF FORMAL COMPLAINT

May 7, 2018

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Complainants CenturyLink Communications, LLC (“CenturyLink”) and Level 3 Communications, LLC (“Level 3”) (collectively, “Petitioners”) hereby respectfully submit this Reply in support of their Formal Complaint:

I. INTRODUCTION¹

The Commission orders and regulations cited in Birch’s Brief in Support of Answer (the “Response”) confirm that the PICC constitutes a flat-rate, common line switched access charge that must be incorporated and assessed within the CLEC benchmark rate cap. Although Birch sidesteps the key facts, draws illogical inferences, and disregards the Commission’s plain language in its rules and decisions, these orders and regulations unequivocally prove: (1) that the PICC was expressly created as a flat-rate, common line switched access rate element to replace the carrier common line (“CCL”) charge; (2) that PICC charges were largely phased out across the country, thereby decreasing or eliminating any equivalent recoverable revenues through PICC charges; and (3) that *all* switched access charges assessed by CLECs—whether per-minute or flat-rate—must be capped by the ILEC benchmark rate, including any PICC.

Birch’s principal argument is that the flat-rate nature of the PICC charge makes it an “access charge” as opposed to a “switched access charge” thereby taking it out of the confines of the CLEC Benchmark Rule.² This argument is directly undercut by Commission Orders, and

¹ Capitalized terms used and not defined in this Reply have the respective meanings assigned to them in the Formal Complaint.

² *See Resp.* at 2–3 (“The Commission, therefore, established the flat-rated per-line PICC to recover costs that historically were recovered through per-minute of use charges. Thus, it makes sense that the flat-rate PICC should be excluded from the per-minute of use switched exchange access service benchmark.”). In the same breath, however, Birch admits that flat-rate charges were intended to be included in the “switched exchange access service benchmark.” *Id.* at fn. 53 (“The switched exchange access service benchmark rule allows CLECs the freedom to impose their own mix of charges, whether per-minute or flat-rate, in their discretion, subject to an overall cap of the ILEC rate.”).

even the plain language of the CLEC Benchmark Rule codified in 47 C.F.R. § 61.26. Moreover, contrary to Birch’s unfounded assertions, additional longstanding Commission precedent establishes that the PICC is a “switched access” rate element subject to the CLEC Benchmark Rule along with any other usage-based or flat-rate switched access charges.

Because the law, history, and policy underlying the PICC make abundantly clear that this is not an “issue of first impression,” Petitioners do not seek any “new rule.” On the contrary, Petitioners respectfully request that the Commission enforce the existing CLEC Benchmark Rule and prohibit Birch from collecting revenues through the PICC common line switched access rate element *in addition to* its usage-based switched access charges capped at the ILEC benchmark rate—which is absolutely not a common market practice as asserted by Birch. Because Birch’s aggregate switched access charges—including the PICC—exceed the ILEC benchmark rate, it cannot escape having its filed interstate access tariff rendered void *ab initio* pursuant to Commission precedent, thereby justifying additional retroactive damages. Therefore, Petitioners respectfully request that the Commission grant their requests for relief as outlined in the Formal Complaint.

II. BACKGROUND: BIRCH IS ONE OF THE ONLY CLECS IN THE ENTIRE COUNTRY THAT ASSESSES A PICC.

CLECs do not—and must not—recover revenues through PICC switched access charges *in addition to* separate usage-based charges if doing so would (in the aggregate) exceed the ILEC benchmark rate, and Birch’s suggestion that CLECs do so as a widespread market practice is completely misguided. Indeed, among the hundreds of CLECs operating in the United States, PICC assessments of any kind are exceedingly rare. Birch argues otherwise by referencing six CLECs (Broadview Networks; Cinergy Communications Company; CMN-RUS, Inc.; First Communications, LLC; Metro Fibernet, LLC; and New Horizon Communications Corp.) that

still include PICC charges in their filed interstate tariffs.³ The issue is not whether tariffs contain a PICC charge, but whether CLECs impose a PICC charge causing their aggregate access rates to exceed the benchmark. Birch need only look in the mirror, where its Tariff authorizes PICC charges nationwide, but it only assesses the PICC in the BellSouth region.

Of the six CLECs referenced, only one, [REDACTED] has assessed a PICC on either CenturyLink or Level 3 at any time since January 2017, but it billed such PICC charges at virtually non-existent amounts—an average of [REDACTED] per month to CenturyLink.⁴ Moreover, [REDACTED] stopped assessing any PICC altogether in April 2017.⁵ Out of the hundreds of existing CLECs, only four in addition to Birch have assessed a PICC to CenturyLink or Level 3 at any time since September 2017, and two of those CLECs assess approximately [REDACTED] per month and [REDACTED] per month, respectively.⁶ Thus, the issue in this case appears to only impact three CLECs in the entire country, with Birch charging by far the most with over [REDACTED] per month this year.⁷

Birch's Response Brief also mentions [REDACTED] which is one of the five CLECs that has assessed a PICC to CenturyLink and Level 3 since September 2017.⁸ Birch identifies [REDACTED] as a CLEC "providing services in the state of North Carolina" that

³ Resp. at 9; Exhibit 1, Affidavit of Tami Spocogee at ¶ 7.

⁴ *Id.* at ¶ 8.

⁵ *Id.*

⁶ *Id.* at ¶ 9.

⁷ *Id.*

⁸ *Id.* at ¶ 10.

still assesses PICC charges.⁹ However, [REDACTED] does not have a PICC listed in its interstate access tariff, but instead in its North Carolina intrastate access tariff.¹⁰ This CLEC does not assess a PICC as a component of interstate access.¹¹

In addition to correcting Birch's baseless assertion that CLECs charge PICCs in excess of the benchmark as a "long-standing market practice,"¹² Petitioners easily address the ancillary discrepancies alleged by Birch.¹³

III. THE COMMISSION ORDERS AND RULES CITED BY BIRCH PROVE THAT THE PICC CONSTITUTES A COMMON LINE SWITCHED ACCESS RATE ELEMENT SUBJECT TO THE CLEC BENCHMARK RULE.

Before the pivotal *Seventh Report and Order*, which created the CLEC Benchmark Rule, CLECs like Birch were "not regulated by the Commission and [were] not restricted in the same

⁹ Resp. at 9.

¹⁰ Exhibit 1 at ¶ 10.

¹¹ *Id.*

¹² Resp. at 22.

¹³ Exhibit 1 at ¶¶ 11–18. In particular, Birch uses the wrong numbers in claiming that the "ratio of PICC charges to non-PICC charges was approximately 1.2 times [sic] not 10 times [sic]." Resp. at 17–18. Continuing with the March 2015 example, although Birch billed CenturyLink [REDACTED] in total switched access charges *nationwide*, its per-minute usage-based charges in the *BellSouth region* totaled only [REDACTED] as accurately stated in Ms. Spocogee's original affidavit. Exhibit 1 at ¶ 11. When compared to the [REDACTED] PICC assessment from that same month—which was only collected from the BellSouth region—it is clear that this illegal charge causes Birch's aggregate switched access charges to be assessed at over ten times its usage-based rate tied to the benchmark. *Id.* Moreover, the discrepancies alleged by Birch in connection with the damages numbers for Claim II relating to all switched access charges assessed by Birch are due to the fact that Birch omits charges assessed to CenturyLink and Level 3 in territories other than the BellSouth region. *Id.* at ¶ 13. The damages numbers provided by CenturyLink and Level 3 accurately reflect the total switched access charges assessed by Birch nationwide in all territories pursuant to its filed interstate access tariff. *Id.*

Petitioners do, however, need to make one correction to their filing. Due to an inadvertent interest accumulation error in the calculations submitted in the Formal Complaint, Petitioners respectfully resubmit their interest calculations. *Id.* at ¶¶ 14–17.

manner as ILECs in how they recover their costs.”¹⁴ The 1999 *Primary Lines* order referenced in the Response specifically states that CLECs “are not rate regulated by the Commission and are not subject to the Commission’s rules regarding SLCs and PICCs.” In fact, when the Commission created the PICC and the Part 69 regulations, which “established a mandatory rate structure for switched access services,”¹⁵ it expressly declined to apply those rules to CLECs.¹⁶

Although the foundational Commission orders and regulations underlying the PICC do not directly pertain to Birch (which disregards their clear import), the orders still provide important precedent establishing (1) that the PICC was expressly created as a flat-rate, common line switched access rate element to replace the CCL charge; (2) that the PICC was largely phased out across the country, thereby decreasing or eliminating any equivalent recoverable revenues through PICC charges; and (3) that *all* switched access charges assessed by CLECs—whether per-minute or flat-rate—must be capped by the ILEC benchmark rate, including any PICC.

A. The 1997 Access Charge Reform Order Modified the Switched Access Rate Structure and Created the PICC as a Flat-Rate, Common Line Switched Access Rate Element to Replace the CCL Charge.

¹⁴ See *In the Matter of Access Charge Reform Price Cap Performance Review for Local Exch. Carriers*, 15 F.C.C. Rcd. 12962 at ¶ 64 (2000) (“*CALLS Order*”).

¹⁵ *In Re Multi-Ass’n Grp. (Mag) Plan*, 16 F.C.C. Rcd. 19613, 19622–23 (2001).

¹⁶ *In the Matter of Access Charge Reform Price Cap Performance Review for Local Exch. Carriers Transp. Rate Structure & Pricing End User Common Line Charges*, 12 F.C.C. Rcd. 15982 at ¶ 396 (1997) (“*1997 Access Charge Reform Order*”) (“We find it unnecessary to apply any of our Part 69 regulations to [CLECs]. . . . As a practical matter, the rates of the [ILECs] will serve as a constraint to some degree on the pricing and practices of non-dominant LECs. We therefore find on this record that it is sufficient to rely on the Section 208 complaint process to assure compliance with the Act by [CLECs], and that we should not apply Part 69 to them.”).

As Birch recognizes, the Commission's *1997 Access Charge Reform Order* fundamentally altered the ILEC switched access rate structure by reducing per-minute, traffic-sensitive switched access charges and establishing flat-rate, non-traffic-sensitive switched access charges to take their place.¹⁷

In rationalizing the *switched access rate structure* in this Order, our primary goal is to ensure that traffic-sensitive costs are recovered through traffic-sensitive charges and [non-traffic-sensitive] costs are recovered through flat-rated charges, wherever appropriate. Because many [non-traffic-sensitive] costs are currently recovered through per-minute charges, *the principal effect of our Order is to reduce the amount recovered through per-minute interstate access charges and increase the amounts recovered through flat-rated charges.*¹⁸

The Commission found that having ILECs recover non-traffic-sensitive costs through flat-rate switched access charges would simply be “more economically efficient . . . [b]ecause [non-traffic-sensitive] costs, by definition, do not vary with usage.”¹⁹ As an “[ILEC’s] common line (or ‘local loop’) costs “do not increase with usage,” the Commission sought to “adjust access rates over time *until the common line revenues of all price cap LECs are recovered through flat-rated charges.*”²⁰ Birch acknowledges that the Commission created the flat-rate PICC for this very reason, *i.e.*, to allow ILECs to “recover some of the loop costs they previously recovered in

¹⁷ See Resp. at 4–5.

¹⁸ *1997 Access Charge Reform Order* at ¶ 53 (emphasis added); see also *id.* at ¶ 43 (“The rate restructuring we implement in this Order results in substantial reductions in the charges for usage-rated interstate access services.”). The reforms pertained only to ILECs. *Id.* at ¶ 6 (“First, we will reduce usage-sensitive interstate access charges by phasing out local loop and other non-traffic-sensitive costs from those charges and directing [ILECs] to recover those [non-traffic-sensitive] costs through more economically efficient, flat-rated charges.”).

¹⁹ *Id.* at ¶¶ 7; 36; see also Resp. at 4.

²⁰ *1997 Access Charge Reform Order* at ¶ 37 (emphasis added).

the [per-minute] CCL charge.”²¹ The Commission anticipated that the functionally-equivalent PICC common line revenues would ultimately replace the CCL charge, which “will fall to zero.”²² The Commission lauded the resulting switched access rate structure as “more closely aligned with cost principles.”²³

In making these cost-efficiency corrections, the *1997 Access Charge Reform Order* made clear that the Commission had always envisioned—and favored—flat-rate, non-traffic-sensitive charges for ILECs to recover common line revenues for switched access services:

In the 1983 *Access Charge Order*, the Commission established a comprehensive mechanism for incumbent LECs to recover the costs associated with their provision of access service required to complete interstate and foreign telecommunications. The access plan distinguished between traffic sensitive costs and [non-traffic-sensitive] costs incurred by an incumbent LEC to provide interstate access service. An incumbent LEC’s [non-traffic-sensitive] costs of providing interstate access, or costs that do not vary with the amount of usage, include the common line, or “local loop,” which connects an end user’s home or business to a LEC central office. . . . In the *Access Charge Order*, the Commission emphasized that its long range goal was to have incumbent LECs recover a large share of the [non-traffic-sensitive] common line costs from end users instead of carriers, and to recover these costs on a flat-rated, rather than on a usage-sensitive, basis. The Commission recognized, however, that a sudden increase in the flat rates imposed by LECs on end users could have a detrimental effect on universal service. For this reason, the rules adopted in 1983 apportioned charges for common line costs between a monthly flat-rated end-user SLC and a

²¹ Resp. at 4 (noting that “the Commission [had previously] allowed [LECs] to recover the remainder of their interstate costs attributable to the local loop through a per-minute carrier common line (‘CCL’) charge assessed on [IXCs].”); *1997 Access Charge Reform Order* at ¶ 37–38 (“Consequently, to the extent that common line revenues are not recovered through the customer’s [subscriber line charge], we conclude that LECs should recover these revenues through a flat, per-line charge on the IXC to whom the access line is presubscribed—the presubscribed interexchange carrier charge, or PICC [rather than through the per-minute CCL charge].”); see also *id.* at ¶ 55.

²² *Id.* at ¶ 60; see also *In Re Multi-Ass’n Grp. (Mag) Plan*, 16 F.C.C. Rcd. 19613, 19645 (2001) (“In 1997, the Commission established the PICC as a substitute for the CCL charge in the common line rate structure of price cap carriers.”).

²³ *Id.* at ¶ 40.

per-minute CCL charge assessed to the IXC's.²⁴

This historical perspective not only reflects the overarching principle that switched access charges can be either flat-rate/non-traffic-sensitive or per-minute/usage-based, but also affirms that the Commission disfavored the per-minute CCL charge and would have preferred to establish a purely flat-rate structure for collecting the same common line revenues.²⁵ Thus, the creation of the PICC was the first step in fulfilling a longstanding Commission goal to “eliminate” the per-minute CCL charge, which recovered the same costs but generated market inefficiencies.²⁶ Because the flat-rate PICC “recovers local loop costs in a cost-causative manner,” it would effectively replace the CCL charges and “move us . . . to a flat-rated pricing scheme that seeks to promote competition, while balancing universal service considerations.”²⁷

The *1997 Access Charge Reform Order* certifies that the PICC constitutes a flat-rate, common line switched access charge, as Birch tacitly recognizes. The Order: (1) specifies throughout that the newly-created PICC was a key element in reforming the “switched access rate structure”—the reason for the Order itself; (2) establishes the PICC as a direct replacement for the CCL switched access charge in collecting the same common line revenues, albeit in a more market-efficient manner in line with public policy; and (3) expressly states that the PICC is a “common line rate element” that recovers “[non-traffic-sensitive] costs associated with local

²⁴ *Id.* at ¶¶ 67–68.

²⁵ *See also CALLS Order* at ¶ 64 (“In the *1983 Access Charge Order*, the Commission established a comprehensive mechanism for LECs to recover their costs of providing access service to complete interstate and foreign communications. This mechanism distinguished between traffic-sensitive costs and non-traffic-sensitive (NTS) costs incurred by a LEC to provide interstate access service.”).

²⁶ *Id.* at ¶¶ 71, 76, 102.

²⁷ *Id.* at ¶¶ 104–105.

switching . . . on a flat-rated, rather than usage sensitive, basis.”²⁸

B. The *CALLS Order* Largely Eliminated the PICC, Which the Commission Continued to Treat as a Common Line Switched Access Rate Element Functionally Equivalent to the CCL Charge.

In the *CALLS Order*, the Commission “adopt[ed] an integrated interstate access reform and universal service proposal” to phase out certain “implicit subsidies” and accomplish a “reasonable and appropriate upfront reduction to access rates that address the positions of both [IXCs and LECs].”²⁹ Among the reforms adopted, the Commission modified the ILEC switched access rate structure by setting new caps for the SLC and multi-line business PICC and eliminating the residential PICC altogether.³⁰ The Commission capped the multi-line business PICC at \$4.31 and aimed to reduce it over time until it was completely removed from the rate structure.³¹ Accordingly, the Commission characterized the multi-line business PICC as a “transitional” or “interim” mechanism to recover permitted common line revenues, and explained that the gradual phase-out was “the better approach in establishing a more efficient interstate access charge rate structure consistent with our long-term universal service goals in a

²⁸ *Id.* at ¶ 125.

²⁹ *CALLS Order* at ¶¶ 1, 3, 38; *see also id.* at ¶ 3 (“By simultaneously removing implicit subsidies from the interstate access charge system . . . , this Order allows us to provide more equal footing for competitors in both the local and long-distance markets, while still keeping rates in higher cost areas affordable and reasonably comparable with those in lower cost areas.”).

³⁰ *Id.* at ¶ 58. Although the Commission reported that “PICCs have markedly reduced the per-minute recovery of local loop costs and raised flat recovery of non-traffic-sensitive costs,” it also found that PICC charges “created market inefficiencies.” *Id.* at ¶ 19; *see also In Re Multi-Ass’n Grp. (Mag) Plan*, 16 F.C.C. Rcd. 19613, 19627 (2001) (“[The *CALLS Order*] continued the process of access charge and universal service reform for [ILECs]. This order established a more straightforward, economically rational common line rate structure by increasing SLC caps and phasing out the PICC, which suffered from inefficiencies due to the indirect flow of loop costs to end users through interexchange carriers.”).

³¹ *CALLS Order* at ¶ 105.

competitive local exchange environment.”³² The Commission also continued to permit ILECs to collect any remaining common line revenues through the per-minute CCL charge to the extent that the SLC and PICC caps would not allow full recovery.³³

Although the multi-line business PICC is still capped at \$4.31, the *CALLS Order* effectively phased out the PICC such that the vast majority of ILECs no longer assess any PICC.³⁴ Birch identifies a small handful of ILECs that still permissibly assess PICC charges in certain areas (CenturyLink Operating Companies, Verizon Telephone Companies, Windstream Telephone System, and Frontier Telephone Companies).³⁵ But, it is indisputably the case for CenturyLink, and appears to be the case for the other ILECs, that these PICCs are, in each instance, assessing a PICC in compliance with Commission rules. Because the allowable revenue under their respective CMT/Line rates exceed the SLC cap, those ILECs submit CAP forms to the Commission each year outlining the amounts, if any, that they can assess for CCL

³² *Id.* at ¶¶ 106, 111.

³³ *Id.* at ¶ 68.

³⁴ See Exhibit 3, Affidavit of Gary Kepley at ¶ 11. Birch also attempts to make much of the fact that CenturyLink’s re-biller agreement references an access line charge as part of the potential compensation that Birch pays CenturyLink. Hayes Affidavit ¶¶ 7-8. To begin with, the agreement does not contain a PICC charge; indeed, PICC is nowhere referenced in the agreement. Instead, [REDACTED]

[REDACTED] Even if it could be viewed as a pass-through of PICC charges, given that some ILECs can still permissibly assess a PICC, it makes perfect sense that these charges will be passed along to the responsible party in a situation where carriers are exchanging traffic in a wholesale relationship. It is also less than the PICC charge assessed by Birch.

³⁵ See generally Exhibit 3.

and PICC charges and the particular geographic areas where they may do so.³⁶ Accordingly, the composite switched access benchmark rates for CLECs in those ILEC territories may account for any PICC revenues collected by the competing ILEC, but can still never exceed their total switched access revenues—including any PICC. Of course, as stipulated by the parties, BellSouth—the competing ILEC in this dispute—does not collect any common line revenues through a PICC,³⁷ and Birch illegally assesses the PICC even though its usage-based switched access charges already hit the Bellsouth benchmark limit.³⁸

Importantly, the *CALLS Order* also expressly confirmed that the PICC is a non-usage-based “switched access” charge, which the Commission continued to treat as a flat-rate, common line rate element that was functionally equivalent to the CCL charge.³⁹

C. The *Seventh Report and Order* Established the Benchmark Rule Capping All Flat-Rate and Usage-Based Switched Access Charges, Including the PICC as a Functionally-Equivalent Sister Rate Element to the Expressly-Named CCL Charge.

With the *Seventh Report and Order*, the Commission created the CLEC Benchmark Rule to directly regulate CLEC switched access rates for the first time.⁴⁰ As the Formal Complaint explains, exorbitant CLEC rates destabilized the market and needed to be reined in:

Previously, the Commission refrained from involving itself in a general

³⁶ *Id.* at ¶¶ 12–18.

³⁷ Exhibit 2 at ¶¶ 11, 14.

³⁸ *See id.* at ¶¶ 15–17.

³⁹ *CALLS Order* at ¶ 146 (“The switched access usage charges to be reduced would include average traffic-sensitive charges and CCL charges, but would exclude SLCs and PICCs.”); *see also id.* at ¶ 157 (“Carriers . . . can shift a portion of their initial-year reductions [in switched access charges] to the common line basket and recover these amounts as additional components of a multi-line business SLC or PICC.”).

⁴⁰ *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, 16 F.C.C. Rcd. 9923 (Rel. April 27, 2001) (“*Seventh Report and Order*”).

examination of the reasonableness of CLEC access rates, ruling instead that any unreasonable rates could be addressed through the section 208 complaint process. However, this regime has often failed to keep CLEC access rates within a zone of reasonableness. It now appears that the best means of proceeding is to restructure and partially deregulate the environment in which CLECs provide access service, providing a bright-line rule that will facilitate effective enforcement.”⁴¹

The Commission did not require CLECs to implement particular rate structures or apply specific rate elements, and instead allowed CLECs to set switched access charges as they wished so long as their per-minute “composite rates” for aggregate switched access charges did not exceed the competing ILEC benchmark. In this way, the Commission specifically contemplated that flat-rate switched access rate elements—including the PICC and any other common line charges—would be captured within the capped benchmark via a single per-minute composite rate:

A number of CLEC commenters urge the Commission not to set the benchmark at “the ILEC rate” because they claim that CLECs structure their service offerings differently than ILECs. We seek to preserve the flexibility which CLECs currently enjoy in setting their access rates. Thus, in contrast to our regulation of incumbent LECs, our benchmark rate for CLEC switched access *does not require any particular rate elements or rate structure; for example, it does not dictate whether a CLEC must use flat-rate charges or per-minute charges, so long as the composite rate does not exceed the benchmark. Rather it is based on a per-minute cap for all interstate switched access service charges.*⁴²

The Commission expressly confirmed that the CLEC Benchmark Rule applies the ILEC benchmark rate cap to “*all* interstate switched access service charges” assessed by a CLEC through the per-minute composite rate.⁴³ Because “CLECs structure their service offerings differently than ILECs,” the Commission “preserve[d] the flexibility which CLECs currently enjoy in setting their access rates” and provided a *non-exclusive* list of flat-rate and per-minute

⁴¹ *Id.* at ¶ 25.

⁴² Seventh Report and Order at ¶ 55 (emphasis added).

⁴³ *See id.* at ¶ 54. (emphasis added).

rate elements that are assessed for switched access services subject to the benchmark.⁴⁴

In this regard, there are certain basic services that make up *interstate switched access service* offered by most carriers. Switched access service *typically* entails: (1) a connection between the caller and the local switch, (2) a connection between the LEC switch and the serving wire center (often referred to as “interoffice transport”), and (3) an entrance facility which connects the serving wire center and the long distance company’s point of presence. Using traditional ILEC nomenclature, it appears that most CLECs seek compensation for the same basic elements, *however precisely named*: (1) *common line charges*; (2) local switching; and (3) transport. The only requirement is that the aggregate charge for these services, *however described in their tariffs*, cannot exceed our benchmark.⁴⁵

The Commission further elaborated in a footnote:

Thus, the safe harbor [benchmark] rate applies, *but is not necessarily limited*, to the following specific rate elements *and their equivalents*: *carrier common line (originating)*; *carrier common line (terminating)*; local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching.⁴⁶

The Commission therefore made clear that no matter how any particular access charge is named in a CLEC tariff (whether flat-rate or usage-based), any such charge must be captured within the benchmark rate if it is billed for switched access service. This is especially true where, as here, a particular rate element is functionally equivalent to one of the listed rate elements. As the authorities referenced above make incontrovertible: the PICC is a flat rated CCL charge that exists to compensate ILECs for use of the local loop. Because the Commission specifically identified the CCL charge as a switched access rate element, the PICC must also constitute a switched access rate element due to the fact that it was purposefully created to replace the CCL

⁴⁴ Seventh Report and Order at ¶ 55.

⁴⁵ *Id.* (emphasis added).

⁴⁶ *Id.* at fn. 26 (emphasis added); see also 47 C.F.R. § 61.26(a)(3) (rule encompasses the same language).

and recover the same common line revenues, but on a cost-causative basis.⁴⁷

The Commission regulation codifying the CLEC Benchmark Rule in 47 C.F.R. § 61.26 likewise affirms that the ILEC benchmark rate caps *all* charges billed by CLECs for switched access services, regardless of how they are described in the tariff, regardless of whether they are flat-rate or per-minute, and regardless of whether they are expressly named in the regulation. Like the *Seventh Report and Order*, the regulation provides a non-exclusive list of rate elements that could be charged for switched access services:

Switched exchange access services shall include . . . [t]he *functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching.*⁴⁸

Again, because the regulation specifically lists the CCL charge—which the PICC was meant to replace by collecting the same common line revenues on a cost-causative basis—the PICC itself is at least a “functionally equivalent” switched access charge included in the definition to be capped at the benchmark rate. In short, the Commission’s plain language in the regulation and *Seventh Report and Order* compels a determination that the PICC constitutes a switched exchange access service rate element subject to the CLEC Benchmark Rule.

In the *Eighth Report and Order*, the Commission again clarified that the rate elements identified in the regulation and *Seventh Report and Order* were by no means intended to be all-encompassing, and that other rate elements not listed would fit within the switched access services definition:

⁴⁷ See, e.g., Resp. at 4 (admitting that the PICC was created to allow ILECs to “recover some of the loop costs they previously recovered in the CCL charge”).

⁴⁸ 47 C.F.R. § 61.26(a)(3)(i) (emphasis added).

When read in conjunction with the definition contained in section 61.26(a)(3), we think the two lists of elements described in paragraph 55 were intended to illustrate what *might be considered* the “functional equivalent” of incumbent ILEC access services, *rather than mandating the provision of a particular set of services*.⁴⁹

The Commission then went further and stipulated that CLECs were only permitted to receive “*revenues*” equivalent to those collected by ILECs through their switched access charges, “*whether they are expressed as per-minute or flat-rate charges.*” The Commission identified the PICC as a particular flat-rate charge that might provide revenues to ILECs “to the extent that it survives in the wake of our *Calls Order*,” and stated that CLECs are permitted to set their benchmarked tariffed rates so that they receive such revenues, *if any*:

By moving CLEC tariffs to the “rate of the competing ILEC” we do not intend to restrict CLECs to tariffing solely the per-minute rate that a particular ILEC charges for its switched, interstate access service. As WorldCom notes, CLECs should not be “deprived of revenue streams available to the incumbent monopolists with which they compete.” Rather, by moving CLEC access tariffs to the competing ILEC rate, we intend to permit CLECs ***to receive revenues equivalent to those the ILECs receive from IXCs, whether they are expressed as per-minute or flat-rate charges. For example, CLECs shall be permitted to set their tariffed rates so that they receive revenues equivalent to those that the ILECs receive through the presubscribed interexchange carrier charge (PICC), to the extent that it survives in the wake of our CALLS Order.*** This does not entitle CLECs to build into their tariffed per-minute access rates a component representing the subscriber line charge (SLC) that ILECs impose on their end users, or any other charges that ILECs recover from parties other than the IXCs to which they provide access service.⁵⁰

As explained above, the *CALLS Order* largely eliminated the PICC such that the vast majority of ILECs, including BellSouth, no longer collect revenues from assessed PICC charges. Instead, ILECs recover common line costs through the SLC, which provides revenues from end-

⁴⁹ *In the Matter of Access Charge Reform*, 19 F.C.C. Rcd. 9108, fn. 48 (2004) (“*Eighth Report and Order*”).

⁵⁰ *Id.* at ¶ 54.

users that cannot be collected by CLECs through the benchmark rate structure. Birch is generally correct that CLECs may charge a PICC “on an ‘equivalent’ basis to ILECs,”⁵¹ but as a result of the PICC phase-out under the *CALLS Order*, the available PICC revenues have been eliminated in most cases as ILECs now recover common line costs through other switched access rate elements. Given this background, Birch cannot collect PICC revenues *in addition to* the usage-based composite rate given that the combination leads to Birch exceeding the ILEC rate.

D. Additional Commission Precedent Proves That the PICC is a Switched Access Charge Subject to the ILEC Benchmark Rate Cap.

In addition to the foundational Commission orders setting forth the comprehensive history underlying the PICC and its application as a switched access charge to the CLEC Benchmark Rule, many other Commission decisions confirm that the PICC is charged for “switched access” services and constitutes a flat-rate, common line switched access rate element subject to the benchmark rate cap. For example, even before the Commission reformed the interstate switched access rate structure and created the PICC to replace the CCL, it recognized that any flat-rate charge for recovering local loop costs—like the PICC—constitutes a switched access charge: The “flat rate recovery of non-traffic-sensitive local loop costs allows reduced charges for interstate switched access services.”⁵²

Other Commission orders consistently treat the PICC as a common line switched access rate element.⁵³ In a 2001 order, the Commission discussed the *1997 Access Charge Reform*

⁵¹ Resp. at 12.

⁵² *In the Matter of Mts & Wats Mkt. Structure Amendment of Part 36 of the Commission's Rules & Establishment of A Joint Bd.*, 6 F.C.C. Rcd. 547 (1991) (emphasis added).

⁵³ Birch cites *AT&T v. BTI*, 16 FCC Rcd 12312 (2001), in a desperate attempt to counter this universally-recognized principle, but that Commission decision actually supports Petitioners’ position. The Commission did not decline to include the PICC in calculating the switched access service rate “because there was no methodology” to do so. Resp. at 14. On the contrary, the

Order and the *CALLS Order*, and praised the Commission’s reductions in “per-minute *switched access rates* towards cost-based levels,” including for the PICC.⁵⁴ The Commission further noted that removing the CCL charge—the rate element that the PICC was originally intended to replace—would “rationalize the access rate structure and move per-minute *switched access rates* towards lower, cost-based levels.”⁵⁵ Again in 2001, the Commission stated that the PICC is charged by ILECs “to recover some of the common line costs . . . that they incur in providing *switched access service* to residential and single line business lines.”⁵⁶ The Commission further explained that in “adopting [the] new access charge rules” in the *1997 Access Charge Reform Order*, it “anticipated that IXCs would pay higher PICCs for lines to [multi-line business] end users” that might result in [multi-line business] users paying significantly more for their *switched access lines*.⁵⁷ Moreover, orders from 2001 and 2002 directly call the PICC a “switched access element.”⁵⁸ Another Commission order from 2013 characterized the PICC as an “interstate

only reference to the PICC in the decision is within a footnote wherein the Commission indicated that the PICC *should* be included in the calculation, but that it could not do so because “*nothing timely submitted in this record proposed a methodology for ‘per-minutizing’ this flat per-line charge or proffered data suggesting that the level of this charge was significant on a per-minute basis.*” Had the PICC at issue been monetarily significant and had the parties actually proposed a method for including it in the composite rate, then the PICC would have been included in the switched access rate calculation.

⁵⁴ *In Re Multi-Ass’n Grp. (Mag) Plan*, 16 F.C.C. Rcd. 19613, 19619 (2001) (emphasis added).

⁵⁵ *Id.* at 19621.

⁵⁶ *In Re Access Charge Reform*, 16 F.C.C. Rcd. 11448 at ¶ 1 (2001) (emphasis added).

⁵⁷ *Id.* at ¶ 3.

⁵⁸ *In Re Material to Be Filed in Support of 2001 Annual Access Tariff Filings*, 16 F.C.C. Rcd. 10408, 10412 (2001); *In Re Material to Be Filed in Support of 2002 Annual Access Tariff Filings*, 17 F.C.C. Rcd. 8019, 8023 (2002).

switched access rate.”⁵⁹ State public utility commissions also agree that the PICC constitutes a switched access charge.⁶⁰

Similarly, in 2013, the Commission issued a public notice seeking comment on the proposed Intercarrier Compensation Reform Compliance and Monitoring Form, which lists the PICC and states that “[w]ithin each tab on the worksheet, each row . . . *specifies a switched access . . . rate element . . . for which demand, revenue, or expense data are reported.*”⁶¹ In accordance with the Commission’s orders and findings over many years, the Multi-Line Business, PRI ISDN, and Business Centrex PICCs are listed as interstate switched access charges in separate rows under the excel worksheet tab titled “Common Line” for “Common Line Rate Elements.”⁶² The Multi-Line Business (“MLB”) and PRI ISDN PICC is defined as “the interstate element for which a rate or presubscribed interexchange carrier charge (PICC) is

⁵⁹ *In the Matter of Connect Am. Fund A Nat'l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing A Unified Inter-carrier Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up Universal Serv. Reform - Mobility Fund*, 28 F.C.C. Rcd. 14887, 14892 (2013) (“The Commission also capped the [PICC] and *other interstate switched access rates.*”) (emphasis added); see also *Coalition for Affordable Local & Long Dist. Ser.*, 15 F.C.C. Rcd. 23204, 23207 (2000) (characterizing the PICC as a “switched access rate”); *In Re 2000 Biennial Regulatory Review-Comprehensive Review of Accounting Requirements*, 16 F.C.C. Rcd. 19911, 19993 (2001) (referencing a state’s proposed additions to state access revenue account for “Switched access revenue: Flat-rate (PICC) and Usage-based”);

⁶⁰ See, e.g., *In Re AT&T Commc'ns of Wisconsin, Inc.*, 6720-TI-156, 2001 WL 1744264 (Nov. 16, 2001) (noting that the 1997 Access Charge Reform Order “creat[ed] a *switched access rate element*, the [PICC]”) (emphasis added); *In Re Waller Creek*, 17922, 1999 WL 667431 (June 10, 1999) (stating that the “local loop-related [PICC] and [CCL] charge apply to . . . *switched access service*) (emphasis added).

⁶¹ *Comment Sought on Inter-carrier Comp. Reform Compliance & Monitoring Form*, 28 F.C.C. Rcd. 49, 53 (2013); see also Exhibit 4, Inter-carrier Compensation Reform Compliance and Monitoring Form (listing PICCs on “CommonLine” tab as separate switched access rate elements).

⁶² *Id.*

assessed upon a MLB (excluding business Centrex) or PRI ISDN end user's presubscribed interexchange carrier (IXC) pursuant to section 69.153.”⁶³ The Business Centrex PICC is defined as “the interstate element for which a rate is assessed upon a business Centrex end user's presubscribed IXC pursuant to section 69.153.”

Finally, because the Commission consistently uses the terms “switched access service” and “access service” interchangeably, the many other references to the PICC as a charge for “access” or “access service” only serve to buttress Petitioners' proven analysis. The regulation codifying the CLEC Benchmark Rule itself provides: “If a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the *access services* provided may not exceed the rate charged by the competing ILEC for the same *access services*”⁶⁴ The *Seventh Report and Order* likewise defines “access services” as “interstate switched access services” and uses the former throughout the order.⁶⁵ This language is the final nail in the coffin to Birch's argument that “access services” are not included in the CLEC Benchmark Rule, only switched access services billed on a per minute of use basis. The express language of the rule states otherwise.

Analyzed together, the *1997 Access Charge Reform Order*, *CALLS Order*, and *Seventh Report and Order* leave no doubt that the PICC is a flat-rate, common line switched access rate element governed by the CLEC Benchmark Rule as codified in 47 C.F.R. § 61.26. The additional Commission materials cited above, as well as the dozens of orders referenced in the Formal Complaint, even further foreclose any reasonable arguments to the contrary. Therefore,

⁶³ *Id.*

⁶⁴ 47 C.F.R. § 61.26(f).

⁶⁵ *Seventh Report and Order* at fn. 2 (“In this order, we use the term ‘access services’ to refer only to interstate switched access services, unless we specifically indicate the contrary.”)

Petitioners respectfully request that the Commission find in their favor and grant the relief requested in the Formal Complaint.

IV. PETITIONERS SEEK TO ENFORCE CLEAR, LONGSTANDING COMMISSION RULES AND PRECEDENT INTENDED TO PROHIBIT UNREASONABLE PRACTICES BY CLECS—NOT ESTABLISH A “NEW RULE.”

Contrary to Birch’s specious argument, no judicial doctrine or other impediment can prevent the Commission from issuing an order specifically confirming that the PICC is a switched access rate element capped by the benchmark rate—an inescapable conclusion from the Commission’s orders and findings over many years. Petitioners do not seek any “new rule,” and merely request that the Commission enforce the existing CLEC Benchmark Rule as codified in 47 C.F.R. § 61.26, and to prohibit Birch from collecting revenues through the PICC common line switched access rate element *in addition to* its usage-based switched access charges given that the combination exceeds the ILEC benchmark rate. This has been the law since promulgation of the *Seventh Report and Order* in 2001—17 years ago. As explained above, disregard of this well-established rule is absolutely not an “established market practice” but rather a Birch-specific unreasonable practice that the Commission can correct in this proceeding without concern as to market impact. Indeed, such a correction would add clarity and efficiency to switched access rate practices and promote the Commission’s goal to ensure “that CLEC access charges are just and reasonable.”⁶⁶

The case law cited by Birch in Section II of the Complaint is completely inapposite and should not be considered. Petitioners do not request or expect any “new law through adjudications” or otherwise, and the Commission need not alter any established rule to enforce its own regulations. Moreover, Birch lists a five-factor test that cannot even apply to this

⁶⁶ *Seventh Report and Order* at ¶ 2.

proceeding: As explained above, this is not an issue “of first impression,” and even if it were, Petitioners do not seek any “new rule” as addressed in the test. Birch’s failure to even address the individual elements demonstrates that the test simply does not apply here. Again, no “unfairness or disruption” (or a “plethora of refund claims”) would result from the Commission’s enforcement of the CLEC Benchmark Rule with respect to the PICC, as CLECs generally do not—and cannot—recover revenues through the PICC in addition to per-minute access charges if such would exceed the ILEC benchmark. The PICC has largely been phased out, and to the extent that it still remains in some carriers’ tariffs, it is not actually assessed and collected from customers.

Similarly, Petitioners’ argument that Birch’s tariff is void *ab initio* due to its excessive aggregate switched access charges is not “novel,” but founded on unambiguous Commission precedent intended to rein in unreasonable behavior. It makes no difference whether the parties stipulated that Birch’s per-minute usage-based charges equal the BellSouth ILEC benchmark rate if Birch’s aggregate switched access charges—including the PICC—violate the CLEC Benchmark Rule. In line with previous Commission decisions, such a violation justifies a finding that Birch’s tariff is rendered void *ab initio* and invalid from issuance, thereby justifying the total retroactive damages sought by Petitioners.⁶⁷

⁶⁷ In one sentence and without citation to any authority, Birch states that if the Commission finds the tariff void *ab initio*, it must separately adjudicate its implied contract affirmative defense. Response at 24. The Commission only has authority to adjudicate the issues before it. Birch simply raises the issue, without any legal support whatsoever. As a matter of procedure, this is improper. 47 C.F.R. §1.724(c) (“The answer shall contain ... legal analysis relevant to all claims and arguments set forth in the answer.”); *In the matter of Nina Shahin v. Verizon De. LLC et al.*, File No. EB-13-MD-002, 2014 WL 1466882, at ¶ 4 and n.21 (F.C.C. April 11, 2014) (because complainant failed to include a legal analysis relevant to the claims, it had no ability to prove its claims; Birch bears burden of proof on its affirmative defenses and thus the same analysis applies). However, even if Birch had attempted to defend its affirmative defense, it would have been futile. The Communications Act and filed rate doctrine preclude the possibility of recovery

Birch essentially argues that this result would be unfair, but Petitioners’ firmly maintain that the law should be enforced to avoid inconsistency and help “keep CLEC access rates within a zone of reasonableness.”⁶⁸ Moreover, IXCs already know—per the Commission’s previous decisions—that benchmark violations should result in a void *ab initio* finding, so such a determination as to Birch would in no way incentivize them “to challenge tariff elements resulting in immaterial asserted overcharges [sic]”⁶⁹ Finally, the policy considerations actually favor a full refund. If a CLEC believes it can violate the CLEC Benchmark Rule, and the worst that will result is refunding the dollars that exceed the benchmark, there is an incentive to do exactly what Birch did here, and hope they do not get caught, or that the IXCs they overcharge do not have the resources to bring a complaint to the Commission. As the Commission stated, “until a CLEC files valid interstate tariffs under Section 203 of the Act or enters into contracts with IXCs for the access services it intends to provide, it lacks authority to bill for those services.”⁷⁰ Finding a tariff void *ab initio* is the equivalent of finding it invalid from the time of issuance.⁷¹

via quasi-contract or implied contract. *CallerID4U, Inc. v. Verizon Business Services, Inc.* 880 F.3d 1048, 1062-65 (9th Cir. 2018) (CLEC did not have effective tariff on file with the Commission; after a detailed analysis, the court concludes “We agree with the reasoning of both the Tenth Circuit in *Union Telephone* and the FCC in *All American II* and conclude that the preemptive effect of the filed rate doctrine precludes CallerID4u from recovering damages under a theory of unjust enrichment or quantum meruit.”).

⁶⁸ *Id.* at ¶ 25.

⁶⁹ Resp. at 24.

⁷⁰ *AT&T Corp. v. All American Telephone Co.*, 28 FCC Rcd. 3477, 3494 (Rel. Mar. 22, 2013).

⁷¹ See *Glob. NAPs*, 247 F.3d at 258–260 (D.C. Cir. 2001) (“[T]ariffs . . . must comply with the applicable statutory and regulatory requirements. Those that do not may be declared invalid.”) (finding tariff “void *ab initio* and invalid from the date it was published”).

In sum, Birch's "policy" concerns are overblown and afford little value to the actual law and policy promulgated by the Commission for many years.

V. CONCLUSION

For the foregoing reasons, the Commission should grant the relief sought in Petitioners' Formal Complaint and find that Birch violated Section 201(b) of the Act.

Respectfully submitted,

**CENTURYLINK COMMUNICATIONS, LLC
LEVEL 3 COMMUNICATIONS, LLC**



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*Attorneys for Complainant CenturyLink
Communications, LLC and Level 3
Communications, LLC*

May 7, 2018

Exhibit 1

PUBLIC VERSION

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	Docket No.
CenturyLink Communications, LLC and)	File No. EB-18-MD-002
Level 3 Communications, LLC)	
)	
Complainants,)	
)	
v.)	
)	
Birch Communications, Inc.,)	
)	
Defendant.)	

AFFIDAVIT OF TAMI SPOCOGEE

State of Oklahoma

Tulsa County

I, Tami Spocogee, having been duly sworn, state the following upon personal knowledge:

1. I am a citizen of the United States of America and reside in the State of Oklahoma.
2. I am over the age of eighteen years.
3. I am a Senior Audit Consultant for TEOCO Corporation, a leading provider of planning, assurance, analytics, and optimization software solutions to communications service providers worldwide.
4. Through the TEOCO Corporation, I was engaged by CenturyLink Communications, LLC ("CenturyLink") to identify, compile, and analyze billing data, payments, tariff rates, individual rate elements, incumbent local exchange carrier ("ILEC") benchmark rates, and other details in connection with the switched access services that Birch Communications, Inc. ("Birch"), a competitive local exchange carrier, provides to interexchange carriers CenturyLink and Level 3 Communications, LLC ("Level 3"), CenturyLink's wholly-owned subsidiary.
5. I executed an affidavit on March 22, 2018 in support of the Formal Complaint submitted by CenturyLink and Level 3 on March 23, 2018. This additional affidavit is executed in support

of the Reply in Support of the Formal Complaint and addresses points made in Birch's Brief in Support of Answer (the "Response Brief") and accompanying affidavit.

6. Among the hundreds of CLECs operating in the United States, it is not a common market practice—and indeed, it is exceedingly rare—for CLECs to assess PICC charges in addition to usage-based switched access service rates tied to the ILEC benchmark rate.

7. The Response Brief lists six CLECs (Broadview Networks; Cinergy Communications Company; CMN-RUS, Inc.; First Communications, LLC; Metro Fibernet, LLC; and New Horizon Communications Corp.) that "continue to have interstate access tariffs on file with the Commission that contain PICCs," but these CLECs do not actually assess and bill any PICC charges.

8. Only one of those CLECs, [REDACTED] has assessed a PICC on either CenturyLink or Level 3 at any time since January 2017, but it billed such PICC charges at virtually non-existent amounts—an average of [REDACTED] per month to CenturyLink. [REDACTED] stopped assessing any PICC altogether in April 2017.

9. Out of the hundreds of CLECs that exist, only four in addition to Birch have assessed a PICC to CenturyLink or Level 3 at any time since September 2017, and two of those CLECs assess approximately [REDACTED] per month and [REDACTED] per month respectively. Thus, the issue in this case appears to only impact five CLECs in the entire United States, with Birch charging by far the most with over [REDACTED] per month this year.

10. Birch's Response Brief also mentions [REDACTED] which is one of the five CLECs that has assessed a PICC to CenturyLink and Level 3 since September 2017. Birch identifies [REDACTED] as a CLEC "providing services in the state of North Carolina" that still assesses PICC charges. However, [REDACTED] does not have a PICC listed in its interstate access tariff, but instead in its North Carolina intrastate access tariff. This CLEC does not assess a PICC as a component of interstate access.

11. Birch applies the wrong numbers in claiming that the "ratio of PICC charges to non-PICC charges was approximately [REDACTED]. Continuing with the March 2015 example, although Birch billed CenturyLink [REDACTED] in total switched access charges *nationwide* that month, its per-minute usage-based charges in the *BellSouth region* totaled only [REDACTED] as accurately stated in my original affidavit. When compared to the [REDACTED] PICC assessment from that same month—which was only collected from the BellSouth region—it is clear that Birch's assessment of the PICC causes its total aggregate switched access charges to be more than ten times higher than its usage-based charges tied to the BellSouth ILEC benchmark rate.

12. The challenged composite rate calculations (which are indeed nearly irrelevant in this dispute given the parties' stipulations that the Birch usage based rates equate to the BellSouth switched access rates) were provided in my original affidavit to illustrate and explain how Birch's usage-based access rates are tied to the BellSouth ILEC benchmark rate, no matter which facilities or type of switch are contemplated and applied to the calculation. I included the usage-based switched access rates calculated as an overall composite per-minute rate for calls that traverse a tandem switch. I could have done the same for calls that were delivered on a direct-connect basis, and the point would have been the same. Whether calls are delivered directly or via a tandem, the Birch usage based rates are roughly the same as the BellSouth switched access rates. There is no question that Birch is billing the PICC in addition to the benchmark.

13. The discrepancies alleged by Birch in connection with the damages numbers for Claim II relating to all switched access charges assessed by Birch are due to the fact that Birch omits charges assessed to CenturyLink and Level 3 in territories other than the BellSouth region. The damages numbers provided by CenturyLink and Level 3 accurately reflect the total switched access charges assessed by Birch nationwide in all territories pursuant to its filed interstate access tariff.

14. Due to an inadvertent interest accumulation error in the calculations submitted in the Formal Complaint, CenturyLink and Level 3 resubmit their interest calculations. As shown in Attachment 1 to this Affidavit, if the IRS interest rate for individual overpayments (set at four percent since 2016) is applied to CenturyLink's claim for [REDACTED] in overpayment damages under Count I of the Formal Complaint, it seeks [REDACTED] in compounded daily interest. As shown in Attachment 1 to this Affidavit, if the IRS interest rate for corporate overpayments (set at three percent since 2016) is applied to CenturyLink's claim for [REDACTED] in overpayment damages under Count I of the Formal Complaint, it seeks [REDACTED] in compounded daily interest.

15. As shown in Attachment 2 to this Affidavit, if the IRS interest rate for individual overpayments (set at four percent since 2016) is applied to Level 3's claim for [REDACTED] in damages under Count I of the Formal Complaint, it seeks [REDACTED] in compounded daily interest. As shown in Attachment 2 to this Affidavit, if the IRS interest rate for corporate overpayments (set at three percent since 2016) is applied to Level 3's claim for [REDACTED] in damages under Count I of the Formal Complaint, it seeks [REDACTED] in compounded daily interest.

16. As shown in Attachment 3 to this Affidavit, if the IRS interest rate for individual overpayments (set at four percent since 2016) is applied to CenturyLink's claim for [REDACTED] in damages under Count II of the Formal Complaint, it seeks [REDACTED] in compounded daily interest. As shown in Attachment 3 to this Affidavit, if the IRS interest rate

for corporate overpayments (set at three percent since 2016) is applied to CenturyLink's claim for [REDACTED] in damages under Count II of the Formal Complaint, it seeks [REDACTED] in compounded daily interest.


17. As shown in Attachment 4 to this Affidavit, if the IRS interest rate for individual overpayments (set at four percent since 2016) is applied to Level 3's claim for [REDACTED] in damages under Count II of the Formal Complaint, it seeks [REDACTED] in compounded daily interest. As shown in Attachment 4 to this Affidavit, if the IRS interest rate for corporate overpayments (set at three percent since 2016) is applied to Level 3's claim for [REDACTED] in damages under Count II of the Formal Complaint, it seeks [REDACTED] in compounded daily interest.

18. Birch's late payment charges are incorrectly calculated because they are converted to a daily rate and compounded. Birch's tariff merely states that any late payment charges are assessed at an amount "equal to 1.5% per month for any past due balance that exceeds 30 days," and does not provide that any charge would be converted to a daily rate and compounded. No late payment charges for the withheld PICC assessments should be collectable, but in any event they would be limited to [REDACTED] as shown in the updated summary shown in Attachment 5 to this Affidavit.

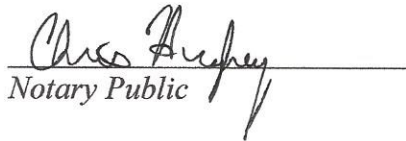
CONFIDENTIAL INFORMATION INCLUDED PURSUANT TO PROTECTIVE ORDER IN
CENTURYLINK COMMUNICATIONS, LLC AND LEVEL 3 COMMUNICATIONS, LLC V. BIRCH
COMMUNICATIONS, INC., FILE NO. EB-18-MD-002

THE STATEMENTS MADE IN THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE
BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Dated this 4th day of May, 2018


Tami Spocogee

The above and foregoing Affidavit was subscribed and sworn to or affirmed by Tami Spocogee
before me this 5 day of May, 2018.


Notary Public

My commission expires: 7/23/19



Exhibit 1
Attachment 1

CONFIDENTIAL MATERIALS OMITTED

Exhibit 1 – Attachment 1

Chart showing interest calculations related to PICC charges paid by CenturyLink

Exhibit 1
Attachment 2

CONFIDENTIAL MATERIALS OMITTED

Exhibit 1 – Attachment 2

Chart showing interest calculations related to PICC charges paid by Level 3

Exhibit 1
Attachment 3

CONFIDENTIAL MATERIALS OMITTED

Exhibit 1 – Attachment 3

Chart showing interest calculations related to total tariffed switched access charges paid by CenturyLink

Exhibit 1
Attachment 4

CONFIDENTIAL MATERIALS OMITTED

Exhibit 1 – Attachment 4

Chart showing interest calculations related to total tariffed switched access charges paid by Level 3

Exhibit 1
Attachment 5

CONFIDENTIAL MATERIALS OMITTED

Exhibit 1 – Attachment 5

Chart showing correct calculation of PCCC-related late payment charges as to CenturyLink

Exhibit 2

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
CenturyLink Communications, LLC and)	File No. <u>EB-18-MD-002</u>
Level 3 Communications, LLC)	
)	
Complainants,)	
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v.)	
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Birch Communications, Inc.,)	
)	
Defendant.)	

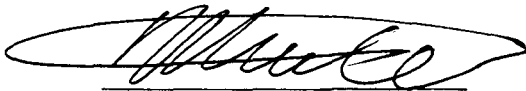
JOINT STIPULATION OF FACTS

1. Birch Communications, Inc. (“Birch”), a competitive local exchange carrier, charges CenturyLink Communications, LLC (“CenturyLink”), an interexchange carrier, for switched exchange access services pursuant to the Access Services Tariff of Birch Communications, Tariff FCC No. 1 (the “Birch FCC Tariff”).
2. Birch charges Level 3 Communications, LLC (“Level 3”), an interexchange carrier, for switched exchange access services pursuant to the Birch FCC Tariff.
3. For purposes of this case, Birch is a “CLEC” as that term is defined in 47 C.F.R. § 61.26(a)(1) and is not a “Rural CLEC” as that term is defined in 47 C.F.R. 61.26(a)(6).
4. For purposes of this case, CenturyLink and Level 3 are “interexchange carriers” or “IXCs” as that term is defined in 47 C.F.R. § 64.4001(d).
5. For purposes of this case, Presubscribed Interexchange Carrier Charge or “PICC” refers to “a monthly, flat-rated charge assessed to the interexchange carrier for each presubscribed local exchange service line or trunk” as described in Section 6.3 of the Birch FCC Tariff.
6. There is no commercial agreement between Birch and CenturyLink that governs the rates that Birch may charge to CenturyLink for switched exchange access service. The parties agree that this dispute pertains to the application of the Commission’s benchmark rule in 47 C.F.R. § 61.26(c).
7. There is no commercial agreement between Birch and Level 3 that governs the rates that Birch may charge to Level 3 for switched exchange access service. The parties agree that

this dispute pertains to the application of the Commission's benchmark rule in 47 C.F.R. § 61.26(c).

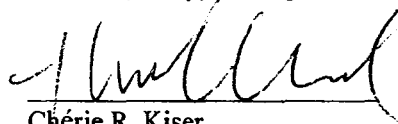
8. There is no commercial agreement between Birch and CenturyLink pursuant to which Birch assesses a PICC on CenturyLink.
9. There is no commercial agreement between Birch and Level 3 pursuant to which Birch assesses a PICC on Level 3.
10. 47 C.F.R. § 61.26(a)(3)(i) states: "Switched exchange access services shall include: (i) The functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching."
11. Birch operates within, among other areas, the BellSouth region, and within the BellSouth region, BellSouth (n/k/a AT&T) is the "competing ILEC" as that term is defined in 47 C.F.R. § 61.26(a)(2).
 - a. The competing ILEC in this case is BellSouth.
 - b. Birch only assesses the PICC in the BellSouth region.
12. Since at least February 2015, the rates Birch has assessed CenturyLink and Level 3 pursuant to Section 5 of the Birch FCC Tariff for the BellSouth region have consisted of the "single per minute rate found in Section 5.4.3A, Local Switching" for the "AT&T (former BellSouth) areas," as stated in Section 5 of the Birch FCC Tariff.
13. For purposes of this case, BellSouth charges the following rate categories from the BellSouth Telecommunications, LLC Tariff F.C.C. No. 1, Access Service (the "BellSouth FCC Tariff"): (a) Local Switching Usage Sensitive Rates (Section 6.8.2(A)(1)); (b) Common Trunk Port Service per each common transport trunk termination per access MOU (Section 6.8.2(A)(2)); (c) the Zone 1 per access minute of use Facility Termination charge (Section 6.8.1(B)(2)); (d) the Zone 1 per access minute of use, per mile charge (Section 6.8.1(B)(2)); (e) the DS3 to DS 1 Multiplexer per access minute of use charge (Section 6.8.1(B)(2)(a)); (f) the Zone 1 per access minute of use Access Tandem Switching charge (Section 6.8.1(C)(1)); (g) the Carrier Common Line Access Charges Premium Access per access minute (Section 3.9.1); and (h) the Information Surcharge charge premium rate per 100 access minutes (Section 6.8.4) ("BellSouth Composite Rate").
14. Since at least February 2015, the BellSouth FCC Tariff has not included a PICC.

15. Since at least February 2015, Birch's rates pursuant to Section 5 of the Birch FCC Tariff for the BellSouth region as set forth in Paragraph 12 have been equal to BellSouth Composite Rate set forth in Paragraph 13.
16. In addition to the rates contained in Section 5.4.3A of the Birch FCC Tariff, pursuant to Section 6.3 of the Birch FCC Tariff, Birch separately assesses CenturyLink and Level 3 a flat-rate \$2.50 monthly PICC per-line or per-trunk for each presubscribed local exchange service line or trunk of a multiline business customer in the 9-state BellSouth region for whom CenturyLink or Level 3 is the presubscribed interexchange carrier.
17. If the Birch PICC were included in the calculation of the Birch switched exchange access service charge for the BellSouth region, the Birch switched exchange access service charge would exceed the benchmark rate by the amount of the PICC.
18. The attached month-by-month tables (one for CenturyLink and one for Level 3) reflect the total PICC charges that Birch assessed, the total PICC charges Complainants paid, and the total late payment charges Birch assessed (if any) during defined periods of time.



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Dated: March 22, 2018

Exhibit 3

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	Docket No.
CenturyLink Communications, LLC and)	File No. EB-18-MD-002
Level 3 Communications, LLC)	
)	
Complainants,)	
)	
v.)	
)	
Birch Communications, Inc.,)	
)	
Defendant.)	

AFFIDAVIT OF GARY KEPLEY

State of Missouri

Jackson County

I, Gary Kepley, having been duly sworn, state the following upon personal knowledge:

1. I am a citizen of the United States of America and I reside in the State of Missouri. My business address is 600 New Century Parkway, New Century, Kansas 66031.
2. I am over the age of eighteen years.
3. I have a Bachelor of Science degree in Civil Engineering from the University of Missouri - Rolla.
4. I have been employed by CenturyLink Communications, LLC ("CenturyLink") and its predecessor companies for 40 years.
5. I am currently the Director Regulatory Compliance and Analytics for CenturyLink. I have held this position since 1998 (with Sprint, Embarq & CenturyLink).
6. From January 2010 to the present, I have led the Industry Price Cap team ("PCIF"), which works with the Industry and the FCC to develop templates for price cap carriers to use in showing that their processes are in compliance with FCC rules.
7. One focus of the PCIF is compliance with the FCC's switched access regime.


8. I am aware that CenturyLink and Level 3 Communications, LLC, filed a Formal Complaint against Birch Communications, Inc., on March 23, 2018.
9. Birch's Response identifies four ILECs (CenturyLink Operating Companies, Verizon Telephone Companies, Windstream Telephone System, and Frontier Telephone Companies) that continue to have tariffs on file with the Commission that include PICC charges to be assessed on multi-line business subscriber's presubscribed IXCs.
10. Birch's Response also asserts that it receives invoices from two ILECs (CenturyTel of Southern Alabama and Windstream Kentucky, East, LLC-Lexington) when it acts as the presubscribed interexchange carrier for a multi-line business subscriber in the BellSouth region.
11. As a general rule, most Price Cap ILECs no longer assess a PICC, and have not for many years. However, the FCC promulgated rules that permit ILECs to assess a PICC under circumstances. *See* 47 C.F.R § 69.153. There are still some ILECs that assess a PICC today.
12. Whether an ILEC is authorized to assess a PICC (or CCL charge for that matter) depends on the company's CMT/Line rate (Common Line, Marketing, Transitional Interconnection charge revenue). When the CMT/Line was first established it took the company's Common Line, Marketing and TIC revenue and divided it by their historical access lines.
13. Each year the CMT/Line is adjusted for any exogenous cost changes (TRS, Regulatory Fee, and NANPA) then it is multiplied times the annual historical access lines to calculate the allowable revenue.
14. The access lines are first priced out at the SLC cap rates. If the SLC cap revenue exceeds the allowable revenue, the SLC rates are set at rates to not over recover the allowable revenue.
15. If the allowable revenue is greater than the maximum SLC revenue, the difference is compared with the Multiline Business ("MLB") lines times the maximum PICC rate (MLB PICC rate as of December 29, 2011). If this difference exceeds the remaining allowable revenue, the PICC rate is set to not over recover the allowable revenue. If the allowable revenue is greater than the maximum SLC and PICC revenue, CCL rates are set.
16. Each year, ILECs complete CAP forms identifying the amounts (if any) they can assess for CCL and PICC charges. Attachment A to this Affidavit is a spreadsheet containing the filing detail for CenturyLink, Frontier, and Verizon for study areas that the allowable revenue exceeds the SLC revenue at the maximum rates. The filing detail (all of the CAP forms) can be found behind the first tab "CAP-1 for Study Areas with PICC."
17. Using the filing detail, I pulled the CAP-1 form for each of the study areas where these ILECs assess a PICC charge. The detail in the attached shows that each of these ILECs have

areas where they are permitted to assess a PICC in accordance with FCC rules. The row (680) on the first tab that is shaded in yellow shows the difference between the eligible revenue and the maximum SLC revenue and, if positive, demonstrates that these ILECs are permitted to assess a PICC. Row (830) shaded in yellow shows the Maximum Average MLB, PRI & Centrex PICC rate.

18. CenturyLink of Southern Alabama (column D on Attachment A) contained a small PICC charge until May 1, 2018, when CenturyLink combined two study areas in its CLOC Tariff No. 2 (Southern Alabama and Central Missouri). When CenturyLink combined rates, the PICC rate went to zero and the MLB SLC rate increased. Before May 1, 2018, Southern Alabama's MLB SLC rate was capped at the \$9.20 cap rate while Central Missouri had an MLB SLC rate below the cap (\$6.76). The combined MLB rate went to \$8.06 and therefore, it was a revenue neutral filing.

THE STATEMENTS MADE IN THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Dated this 7th day of May, 2018



Gary Kepley

The above and foregoing Affidavit was subscribed and sworn to or affirmed by Gary Kepley before me this 7th day of May, 2018.



Notary Public

My commission expires:

4-7-2020

PEGGY G. PAUL
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
JACKSON COUNTY
MY COMMISSION EXPIRES 4/7/2020
MY COMMISSION # 16684266

Exhibit 3
Attachment A

Source

1

	CNAS	CTC1	CTC2	CTC3	CTC4	COIL	COIN	CONC	COWA	GAIN	GTNC	GTOH	GTOR	GTWA	COPT	COVA	GTNC	GTKY	VANM	COKY	VATX	VCTX	WSMZ		
	CenturyTel of Southern Alabama	Frontier	Frontier	Frontier	Frontier	Frontier	Frontier	Frontier	Frontier	Frontier	Frontier	Frontier	Frontier	Frontier	VERIZON TELEPHONE COMPANIES	VERIZON TELEPHONE COMPANIES	VERIZON TELEPHONE COMPANIES	Windstream Kentucky East - Lexington	Valor New Mexico #1164	Windstream Kentucky East - London	Valor Texas #1163	Valor Texas #1181	Windstream Montezuma		
Price Cap Tariff Review Plan Calculation of EUCL Limits, PICC Rate and CCL Rates																									
	Source	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)	Total Jurisdiction (a)			
CMT Revenue Vs EU Revenue at Max. Allowable Rates																									
600	Proposed Maximum CMT Revenue	r460 * r130 or Sum of Jurisdictions	6,859,518	45,872,762	13,320,960	343,656	13,373,821	4,619,039	7,308,629	8,580,932	4,758,404	23,836,003	6,494,869	23,860,487	15,873,165	21,490,580	5,594,542	26,221,084	1,407,442	23,579,765	2,440,184	6,189,503	9,572,374	7,685,033	116,063
610	Maximum Allowable PR, Lifeline & SLB EU Revenue	r400 * r100 or Sum of Jurisdictions	3,267,531	21,105,026	3,978,923	394,414	7,026,962	1,857,817	3,376,724	4,180,586	1,775,033	10,847,369	1,970,202	13,234,137	6,821,965	9,513,855	2,681,517	7,581,646	772,298	9,069,112	671,320	3,461,348	4,840,497	3,984,475	66,775
620	Maximum Allowable NonPrimary Res & BRI EU Revenue	r410 * r110 or Sum of Jurisdictions	27,328	938,357	183,295	12,313	274,897	51,996	101,535	150,661	78,729	302,687	118,699	401,506	290,206	485,982	132,475	373,198	16,506	2,924,215	366,674	894,747	1,315,432	1,082,803	14,742
630	Maximum Allowable MLB, PRI & Centrex EU Revenue	r420 * r120 or Sum of Jurisdictions	1,533,438	12,282,101	2,877,226	163,254	4,661,879	1,472,248	1,891,612	1,482,387	937,360	7,248,229	2,391,632	7,808,390	3,960,894	6,547,024	801,467	7,234,310	370,502	6,482,909	965,338	1,239,645	2,372,113	1,952,614	32,274
640	Total Maximum Allowable EU Revenue	r610 + r620 + r630	4,828,296	34,325,484	7,039,444	569,981	11,963,738	3,382,061	5,369,871	5,813,633	2,791,122	18,398,285	4,480,533	21,444,032	11,073,065	16,546,861	3,615,459	15,189,153	1,159,306	18,476,236	2,003,332	5,595,739	8,528,042	7,019,892	113,790
650	Remaining CMT Revenue[CMT Over-recovery]	r600 - r640	2,031,222	11,547,278	6,281,516	-226,324	1,410,083	1,236,977	1,938,758	2,767,299	1,967,281	5,437,718	2,014,336	2,416,455	4,800,100	4,943,720	1,979,083	11,031,931	248,136	5,103,529	436,853	593,764	1,044,333	665,141	2,273
652	Maximum Allowable PICC Revenue	r430*(r200+r210/9+r220) or Sum of Jurisdictions	83,368	4,290,753	1,007,991	64,861	1,761,376	113,128	131,363	246,095	687	1,990,869	397,832	1,335,430	666,391	65,174	85,539	650,207	43,901	237,912	0	6,886	492,069	213,725	0
660	Total USAC Receipts (at t)	RTETr1685 or Sum of Jurisdictns	1,952,361	10,367,500	4,409,259	0	1,016,471	1,143,380	1,736,452	2,431,950	1,833,246	4,637,525	1,801,324	2,346,334	4,008,272	4,629,066	1,684,043	10,819,704	237,068	4,377,859	0	528,087	0	0	0
680	Remaining Recoverable Revenue(Total over-recovery)	r600-r640-r665-r670 or Sum of Juris	78,861	1,179,778	1,872,256	-226,324	393,612	93,597	202,306	335,349	134,035	800,193	213,012	70,121	791,827	314,653	295,040	212,226	11,068	725,670	436,853	65,677	1,044,333	665,141	2,273
Calculation of PICC for MultiLine Business, PRI ISDN, & Centrex Lines																									
800	MLB, PRI & Centrex PICC Rate (Dec. 29, 2011)	r430	0.594492	4.310000	4.310000	4.310000	4.310000	0.890000	2.040000	1.390000	0.010000	1.900000	1.460000	2.130000	2.130000	0.130000	0.981625	0.978576	0.904064	0.440218	0.000000	0.139859	2.048812	1.160816	0.000000
810	MLB, PRI & Centrex PICC Revenue Target	if r680=0 then r680 else 0, or Sum of Jurisdictions	78,861	1,179,778	1,872,256	0	393,612	93,597	202,306	335,349	134,035	800,193	213,012	70,121	791,827	314,653	295,040	212,226	11,068	725,670	436,853	65,677	1,044,333	665,141	2,273
820	MLB, PRI & Centrex PICC Target Rate	r810 / (r200 + r210/9 + r220)	0.562355	1.185071	8.005457	0.000000	0.963149	0.736347	3.141707	1.894130	1.950713	0.763670	0.781730	0.111843	2.530933	0.627627	3.385816	0.318753	0.227930	1.342736	0.000000	1.333939	4.348252	3.612611	0.000000
830	Maximum Average MLB, PRI & Centrex PICC Rate	Min(r800,r820)	0.562355	1.185071	4.310000	0.000000	0.963149	0.736347	2.040000	1.390000	0.010000	0.763670	0.781730	0.111843	2.130000	0.130000	0.981625	0.318753	0.227930	0.440218	0.000000	0.139859	2.048812	1.160816	0.000000
840	Maximum MLB & PRI PICC Revenue	r830 * r200, or Sum of Jurisdictions	73,778	1,143,109	972,789	0	386,547	88,902	109,099	225,701	672	747,889	199,767	66,041	644,061	62,030	80,908	196,817	10,379	231,287	0	6,706	462,505	209,496	0
850	Maximum Centrex PICC Revenue	r830 * (r210/9 + r220), or Sum of Jurisdictions	5,084	36,670	35,202	0	7,065	4,695	22,264	20,393	15	52,304	13,245	4,080	22,330	3,144	4,630	15,410	690	6,625	0	180	29,564	4,229	0
860	Total Maximum PICC Revenue (Proposed)	r840 + r850	78,861	1,179,778	1,007,991	0	393,612	93,597	131,363	246,095	687	800,193	213,012	70,121	666,391	65,174	85,539	212,226	11,068	237,912	0	6,886	492,069	213,725	0
Calculation of CCL Rates and Revenue																									
940	Prem. Originating MOU Rate as of Dec. 29, 2011	Input or Weighted Avg of Jurisdictns	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	
945	Prem. Terminating MOU Rate as of Dec. 29, 2011	Input or Weighted Avg of Jurisdictns	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	
950	Maximum CCL Revenue	r810 - r860, or Sum of Jurisdictions	0	0	864,266	0	0	70,943	89,254	133,348	0	0	0	125,436	249,479	209,501	0	0	487,758	436,853	58,791	552,263	451,415	2,273	
960	Maximum CCL Originating Rate	Min(r940, r950/350)	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	
970	Maximum CCL Terminating Rate	Min(r945, (r950 - (r350*r960))/r320)	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	
980	Maximum Originating CCL Revenue	r960 * r350, or Sum of Jurisdictions	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
990	Maximum Terminating CCL Revenue	r970 * r320, or Sum of Jurisdictions	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
995	Total Maximum CCL Revenue	r980 + r990	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
EU Pricing Decision																									
1100	Is Deaveraging of EUCL Rates Possible?	if r680=0,"No","Yes"	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	
1110	Do you have Pooling Revenues?	Input	NO	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
1120	Are you going to deaverage EUCL Rates by zone?	Input (if r1100 = "No" you must input "No")	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	
1130	CAP Form containing final EUCL Rates	if g6=g7=g8=Y,JurisSPM; if g6=g7=r1&g9=N,JurisSP; if g6=g7=r2&g9=N,JurisMx; if g6=g7=g8=N&r680<=0,JurisS; if g10=Y,JurisMx; if Juris rates,sum of Juris;if 1130=CAP1,r610;else1130	CAP1	CAP1	CAP1	CAP3	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	CAP1	
1140	Max. Allowable PR, Lifeline & SLB EU Revenue	if Juris rates,sum of Juris;if 1130=CAP1,r610;else1130	3,267,531	21,105,026	3,978,923	CAP3	7,026,962	1,857,817	3,376,724	4,180,586	1,775,033	10,847,369	1,970,202	13,234,137	6,821,965	9,513,855	2,681,517	7,581,646	772,298	9,069,112	671,320	3,461,348	4,840,497	3,984,475	66,775
1150	Max. Allowable NonPrimary Res & BRI EU Revenue	if Juris rates,sum of Juris;if 1130=CAP1,r620;else1130	27,328	938,357	183,295	CAP3	274,897	51,996	101,535	150,661	78,729	302,687	118,699	401,506	290,206	485,982	132,475	373,198	16,506	2,924,215	366,674	894,747	1,315,432	1,082,803	14,742
1160	Max. Allowable MLB, PRI & Centrex EU Revenue	if Juris rates,sum of Juris;if 1130=CAP1,r630;else1130	1,533,438	12,282,101	2,877,226	CAP3	4,661,879	1,472,248	1,891,612	1,482,387	937,360	7,248,229	2,391,632	7,808,390	3,960,894	6,547,024	801,467	7,234,310	370,502	6,482,909	965,338	1,239,645	2,372,113	1,952,614	32,274

Exhibit 4

	A	B	C	D	E	F	G	H
1	COMMON LINE	Type of Traffic (Interstate, Intrastate, or Recip. Comp.) or State	Requested Unit of Demand	Eligible ARC Lines	Total Units for Flat- Rated Elements	Total Originating Units for Usage-Based Elements	Total Terminating Units for Usage-Based Elements	VoIP Units for Flat-Rated Elements
2	Primary Residential, Single Line Business, and Lifeline End User Common Line	Interstate	Line	---		---	---	
3	Nonprimary Residential and BRI ISDN End User Common Line	Interstate	Line	---		---	---	
4	Multiple Line Business, PRI ISDN, and Centrex End User Common Line	Interstate	Line	---		---	---	
5	Multiple Line Business and PRI ISDN Presubscribed Interexchange Carrier (excluding Centrex)	Interstate	Line	---		---	---	
6	Business Centrex Presubscribed Interexchange Carrier	Interstate	Line	---		---	---	
7	Carrier Common Line Per MOU	Interstate	MOU	---	---			---
8	Line Port Costs in Excess of Basic Analog Service	Interstate	---	---		---	---	---
9	Total Common Line - Interstate	Interstate	EUCL Line	---		---	---	
10	Common Line - Intrastate	Alabama	Line	---		---	---	
11	Common Line - Intrastate	Alaska	Line	---		---	---	
12	Common Line - Intrastate	Arizona	Line	---		---	---	
13	Common Line - Intrastate	Arkansas	Line	---		---	---	
14	Common Line - Intrastate	California	Line	---		---	---	
15	Common Line - Intrastate	Colorado	Line	---		---	---	
16	Common Line - Intrastate	Connecticut	Line	---		---	---	
17	Common Line - Intrastate	Delaware	Line	---		---	---	
18	Common Line - Intrastate	District of Columbia	Line	---		---	---	
19	Common Line - Intrastate	Florida	Line	---		---	---	
20	Common Line - Intrastate	Georgia	Line	---		---	---	
21	Common Line - Intrastate	Hawaii	Line	---		---	---	
22	Common Line - Intrastate	Idaho	Line	---		---	---	
23	Common Line - Intrastate	Illinois	Line	---		---	---	
24	Common Line - Intrastate	Indiana	Line	---		---	---	
25	Common Line - Intrastate	Iowa	Line	---		---	---	
26	Common Line - Intrastate	Kansas	Line	---		---	---	
27	Common Line - Intrastate	Kentucky	Line	---		---	---	
28	Common Line - Intrastate	Louisiana	Line	---		---	---	
29	Common Line - Intrastate	Maine	Line	---		---	---	
30	Common Line - Intrastate	Maryland	Line	---		---	---	
31	Common Line - Intrastate	Massachusetts	Line	---		---	---	
32	Common Line - Intrastate	Michigan	Line	---		---	---	
33	Common Line - Intrastate	Minnesota	Line	---		---	---	
34	Common Line - Intrastate	Mississippi	Line	---		---	---	

	A	B	C	D	E	F	G	H
35	Common Line - Intrastate	Missouri	Line	---		---	---	
36	Common Line - Intrastate	Montana	Line	---		---	---	
37	Common Line - Intrastate	Nebraska	Line	---		---	---	
38	Common Line - Intrastate	Nevada	Line	---		---	---	
39	Common Line - Intrastate	New Hampshire	Line	---		---	---	
40	Common Line - Intrastate	New Jersey	Line	---		---	---	
41	Common Line - Intrastate	New Mexico	Line	---		---	---	
42	Common Line - Intrastate	New York	Line	---		---	---	
43	Common Line - Intrastate	North Carolina	Line	---		---	---	
44	Common Line - Intrastate	North Dakota	Line	---		---	---	
45	Common Line - Intrastate	Ohio	Line	---		---	---	
46	Common Line - Intrastate	Oklahoma	Line	---		---	---	
47	Common Line - Intrastate	Oregon	Line	---		---	---	
48	Common Line - Intrastate	Pennsylvania	Line	---		---	---	
49	Common Line - Intrastate	Rhode Island	Line	---		---	---	
50	Common Line - Intrastate	South Carolina	Line	---		---	---	
51	Common Line - Intrastate	South Dakota	Line	---		---	---	
52	Common Line - Intrastate	Tennessee	Line	---		---	---	
53	Common Line - Intrastate	Texas	Line	---		---	---	
54	Common Line - Intrastate	Utah	Line	---		---	---	
55	Common Line - Intrastate	Vermont	Line	---		---	---	
56	Common Line - Intrastate	Virginia	Line	---		---	---	
57	Common Line - Intrastate	Washington	Line	---		---	---	
58	Common Line - Intrastate	West Virginia	Line	---		---	---	
59	Common Line - Intrastate	Wisconsin	Line	---		---	---	
60	Common Line - Intrastate	Wyoming	Line	---		---	---	
61	Common Line - Intrastate	Guam	Line	---		---	---	
62	Common Line - Intrastate	Puerto Rico	Line	---		---	---	
63	Total Common Line - Intrastate	Intrastate	Line	---		---	---	
64	Total Interstate and Intrastate Common Line	Interstate + Intrastate	---	---		---	---	

	I	J	K	L	M	N	O	P	Q	R	S	T
1	VoIP Originating Units for Usage-Based Elements	VoIP Terminating Units for Usage- Based Elements	8YY Units for Flat- Rated Elements	8YY Originating Units for Usage- Based Elements	Total Revenue From Flat- Rates	Total Revenue From Flat Rates Excluding Revenue From Affiliates	Total Originating Revenue From Usage-Based Rates	Total Originating Revenue From Usage-Based Rates Excluding Revenue From Affiliates	Total Terminating Revenue From Usage-Based Rates	Total Terminating Revenue From Usage-Based Rates Excluding Revenue From Affiliates	VoIP Revenue From Flat- Rates	VoIP Originating Revenue From Usage-Based Rates
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1	VoIP Terminating Revenue From Usage-Based Rates	8YY Revenue From Flat-Rates	8YY Originating Revenue From Usage-Based Rates	Recip. Comp. Revenue-Related MOU	Recip. Comp. Revenue	Recip. Comp. Revenue Excluding Revenue From Affiliates	Recip. Comp. Expense-Related MOU	Recip. Comp. Expense	
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